IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.3656 of 2006

Yogesh V Athavle and Anr. ..Petitioners

vs

Maharashtra Public Service
Commission & Ors. ..Respondents

Mr. M.L.Patil for the petitioners
Mr.P.I Khemani, Asst. Govt. Pleader for respondent Nos.1 to 3.

CORAM: V.G.PALSHIKAR,Acg C.J. ,
& V.M.KANADE, J.

DATE: JULY 26, 2006.

P.C.:-

This petition is filed by the unsuccessful candidates who could not be qualified and be selected for the post of Civil Judge Junior Division and Judicial Magistrate First Class in the State of Maharashtra. By this petition following prayers are made:

> "A) Issue a Writ of Mandamus, or any other appropriate writ, order or direction in the nature of Mandamus, to the respondents calling for the record of the entire selection process conducted in pursuance of the Notification dated 25.2.2005; and
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> B) Issue a Writ of Mandamus, or any other appropriate writ, order or direction in the nature of Mandamus, to MPSC to produce the original answer sheets of the petitioners before this Hon`ble Court and supply the copies thereof to the petitioners.
> C)Issue a Writ of Mandamus, or any other appropriate writ, order or direction in the nature of

Mandamus directing the MPSC to give the bifurcation of marks allotted to the candidates in written examination and interview and personality test.

D) Issue a direction for constitution of Enquiry Committee consisting of a retired Judge of this Hon`ble Court ;and at least one representative of the candidates to look into the following aspects:

I. To see whether the marks allotted to the candidates in the answer sheets are the same as those reflected in the mark sheet.

2. To enquire into the charges of arbitrary allotment of marks in the interviews.

3. To enquire into the charges of tampering with the mark sheets and draw up a fresh list of candidates selected for interview in the light of the findings of the said enquiry.

E) Issue a Writ of Prohibition or any other appropriate writ, order or direction in the nature of Prohibition, restraining the respondents from making final appointments of any of the candidates selected in pursuance of Notification dated 25.2.2005; and

Ea) Issue a writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus to quash and set aside the list of recommended candidates dated 18.I2.2005 prepared by the MPSC for selection to the post of Civil Judge, (J.D.) and Judicial Magistrate(F.C.)

Eb) Issue a writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus to quash and set aside the impugned letter dated 18.05.2006 and Notification dated 23.5.2006.

F) Cost of this petition be paid by the respondents.

G) Such further or other order(s) as this Hon'ble Court may deem fit and proper”

2. The first prayer prays for a writ calling for the record of the entire selection process. The averments supporting this prayer are vague and do not make out any case for calling for such record. Apart from the fact that the petitioners have not made out any case, in law it deserves to be rejected.

3. By the second prayer the petitioners claimed production of original answer sheets of the petitioners and supply copies thereof to them. There is no such right in the petitioners and it is obviously a fishing inquiry.

4. The next prayer is for directing the MPSC to give bifurcation of marks allotted to the candidates in the written examination and interviews. For this prayer reliance is placed on a judgment of the Supreme Court in the case of Ashok Kumar Yadav and Others vs. State of Haryana and Others, reported in (l985) 4 S.C.C.417. In that judgment itself the Supreme Court has clearly observed that there cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test and it can vary according o the need of the post to be filled in. Therefore the Supreme Court has suggested that uniformity of marks be allotted to viva voce examination. By

and large this suggestions have been accepted by various Public Service Commissions. The requirement for viva voce for recruitment of Civil Judge (J.D.) and Judicial Magistrate, (F.C) is obviously higher. Answers to written questions will not be enough or adequate to bring to light the qualities of an individual, which are necessary for being a Civil Judge. The guidelines provided by the Supreme Court are precisely for such reasons. Consequentially this prayer also deserves to be rejected.

5. By prayer (D) the petitioners seek constitution of an enquiry committee consisting of a retired Judge of this court and one representative of the candidates to look into the aspects stated. Apart from the fact that the prayer is baseless, there is no need whatsoever for constitution of such a committee. No instances have been quoted of magnitude which would require constitution of such a committee.

6. Then a writ of prohibition is sought restraining the respondents from making final appointments. This prayer does not survive as the appointments have already been made.

7. By amendment prayers were added seeking quashing of the select list and the notification by which it was published. It is the basic principle of law that when the appointment of any person is questioned, that person is a necessary party. The petitioners, who appeared for the selection for the Civil Judge's post, are not aware of this basic principle of law. Having not made any of the persons party, even though the list is annexed to the petition, this prayer also, therefore, deserves to be rejected.

In the result,therefore, petition fails and the same is dismissed.